



DOMESTIC VIOLENCE RESTRAINING ORDERS: THE BASICS

Frequently Asked Questions

1. **If both parties present to the business office at the same time for a Temporary Restraining Order (TRO), which applicant takes precedence?**

Neither. They are both moving parties.

2. **Currently, our county will issue non CLETS orders primarily to individuals who require firearms for their jobs. Is this in violation of domestic violence laws?**

Courts can issue CLETS orders and allow possession of a firearm for employment. Family Code section 6389(h) provides that a court may

grant an exemption from the relinquishment requirements of ... for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary.

The statute has some additional requirements for the safekeeping of the firearm.

In addition, if the case involves a peace officer, the court may allow the officer to carry a firearm if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Before making this finding, the court shall require a mandatory psychological evaluation and may require the officer to enter into counseling or another kind of program. This action typically requires a hearing. There is some dispute about the enforceability of non CLETS orders and whether they are exempt from federal firearm prohibitions. It is possible that a non CLETS order will still invoke federal firearm prohibitions, and thus the effort to avoid the firearms laws may not be successful.

Some judicial officers interpret the Family Code as allowing protective orders to be issued on forms other than the standard DV forms. These orders sometimes specifically state that they are not intended to fall under the Domestic Violence Prevention Act (DVPA), and are commonly known as non CLETS orders. Other judicial officers disagree with this interpretation.

In any event, Family Code section 6380 states that only protective orders that have been adopted by the Judicial Council can be transmitted to the statewide Department of Justice Domestic Violence Restraining Order System (DVROS). Thus, a protective order not on a standard CLETS form may not be entered into the registry, and law enforcement may or may not enforce it.

3. **What is the Domestic Violence Registry?**

The Domestic Violence Restraining Order System (DVROS) is a statewide registry of all domestic violence, civil harassment, elder abuse, and workplace harassment orders. Technically, the registry is accessed through the California Law Enforcement Telecommunications System (CLETS). DVROS actually houses the different orders.

4. **Can the court provide phone access to the victim to call for an Emergency Protective Order (EPO)?**

Victims should be directed to a bailiff who will call for an EPO, if necessary.

5. **If, in Susan's situation in the broadcast, her application is incomplete, should the clerk help her to complete it? If an advocate is not available, is an EPO the next logical step, so that Susan has time to properly complete her forms?**

If the advocate is not available, an EPO would be appropriate. If there is time to present to the court, the clerk can't help Susan complete her application, but can show her where the application may be incomplete and remind her that the judge needs sufficient facts to be able to grant the requested order. Although the clerk would not assist in an urgent situation, the clerk should refer her to the available self-help resources.

6. **Is there a difference between a restraining order and a stay away order?**

Often, the term "stay away order" refers to a domestic violence restraining order because it contains an order requiring the respondent to stay a certain number of yards away from the petitioner. However, not all domestic violence restraining orders contain stay away orders. The stay away order is a provision of a restraining order (see Fam. Code, § 6320). The judge has discretion to order this remedy.

7. **Can a person 12 years of age or older represent him-or herself, or file a civil harassment TRO?**

Yes, a person 12 years of age or older can request or oppose any restraining order. See #8 of the True/False Quiz.

8. **Can Susan's father legally kick out his 17-year-old daughter?**

This is not an issue for the court clerk.

9. **How do you get an EPO? Is it only available when both parties are present as in the broadcast scenario with Susan and Mark?**

Both parties do not need to be present. Should a person feel that he or she is in danger, and is unable to get to the court or the court is closed, the person should call local law enforcement, which will contact the on-call judicial officer if the situation warrants.

10. **When the other party is not present, how does a party get an EPO when the courthouse is closing? Will the on-call judge be onsite to sign the protective order? Or will the deputy make the determination to get the EPO signed by the judge?**

The law enforcement officer makes the request to the on-call judge. It is not necessary to have both parties present. The judge does not need to sign the order. See Judicial Council form EPO-001 in which the law enforcement officer can indicate that he or she contacted the judge and presented the facts. Family Code section 6250 et seq. describes the EPO and how it is sought.

11. **Where can people go if they need help in completing or understanding the forms?**

Consult your supervisor or manager about resources in your area. Some possible resources are: the Domestic Violence Assistance Office, Victim Witness Assistance Center, Family Violence Law Center, or Self-Help kiosk and, as appropriate for your county, the Family Law Facilitator. You may want to have a job aid with resources available in your county.

12. **How do Child Protective Services (CPS) referrals factor into this? Should the clerk make a referral?**

The clerk does not read the declaration of the party and should not make this kind of decision. The clerk should only make a referral as directed by the judicial officer.

13. **Clarification on Item 21 on DV-100.**

The litigant may want to include additional facts to support his or her request. The additional facts can be written on forms including DV-101, MC-020, or pleading paper. For example, an attorney may submit the declaration on pleading paper.

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Consult your supervisor if you have questions about your court's policy or procedures.